

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
License No. 483343
Issued to: Arthur W. Habeck

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2304

Arthur W. Habeck

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order date II June 1981, an Administrative Law Judge of the United States Coast Guard at New York, New York suspended Appellant's mariner's license for three months, on twelve months' probation, upon finding him guilty of negligence. The specification found proved alleged that, while serving as Master on board the United States SS CHARLESTON under authority of the license above captioned, on or about 4 April 1980, Appellant failed to properly supervise the vessel's bridge watch, which contributed to the grounding of the vessel. Appellant was also charged with failure to verify the vessel's position. However, this specification was dismissed at the end of the Investigating Officer's case upon motion by Counsel.

The hearing was held at New York, New York on 22 and 27 August; 9 and 30 September; 7, 14 and 25 November; and 5 December 1980; 26 Jan; 6 and 25 February; 6 and 24 March; 2 April; and 19 and 20 May 1981.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence five exhibits.

In defense, Appellant offered in evidence one exhibit and testified in his own behalf.

After the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charge and one specification had been proved. He then served a written order on Appellant suspending all licenses issued to Appellant for a period of three months on twelve months' probation

The entire decision was served on 15 June 1981. Appeal was

timely filed on 14 July 1981 and perfected on 19 May 1982.

FINDINGS OF FACT

On 4 April 1980, Appellant was serving as Master on board the United States SS CHARLESTON and acting under authority of his license while the vessel was enroute between Elizabeth, New Jersey and Boston, Massachusetts. The SS CHARLESTON is a SEA-LAND container vessel approximately 497 feet in length. The vessel was equipped with a gyro-compass, azimuth circle, fathometer, two radars and Loran C which were all operational on the morning of 4 April 1980. One radar was turned on and the other was on ready stand-by.

The Second Mate, Bruce H. Bartlett, had the 0400-0800 bridge watch on 4 April 1980. Although he was serving as Second Mate, Bartlett had a Master's license that he had kept current since 1949. Bartlett had joined the SS CHARLESTON as Second Mate in Seattle, Washington in February 1980 and sailed on the following voyages: Seattle to Anchorage and return; Seattle to Anchorage to Kodiak and return; Seattle to Elizabeth, New Jersey via the Panama Canal; Elizabeth to Houston to New Orleans and return; Elizabeth to Philadelphia and return; Elizabeth to Boston.

The weather was clear with visibility about four miles on the morning of 4 April 1980.

In accordance with the vessel's standing orders, Bartlett plotted the vessel's position every half hour. These plotted positions showed the vessel's course to be between 3 and 4 miles offshore. At approximately 0555, in preparation for his 0600 plot, Bartlett took a radar range and visual bearing from Montauk Light. He incorrectly plotted the range and bearing from Southeast Light on Block Island Chart (No. 13218). The error occurred because he believed he was plotting on the Long Island Chart (No. 13205). Using the resulting position, Bartlett plotted a course of 0500° T to Buoy R2 which is located at the entrance to Buzzards Bay.

Appellant was on the bridge when Bartlett incorrectly plotted the vessel's position. After discussing the plotted position with Bartlett, Appellant calculated the course for Buzzards Bay to be 049°. This calculation was made without Appellant detecting Bartlett's error. The vessel's course was then changed from 070° T to 050° T. As a result of the error the vessel ran aground on the shoal of Block Island.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant's bases for appeal can be

summarized as follows:

I. Appellant urges that dismissing the First Specification and finding the Second Specification proved constitute inconsistent verdicts that justify reversal.

II. Appellant contends that the Administrative Law Judge committed prejudicial error when he admitted the testimony of the Second Mate.

III. Appellant argues that the language of the Second Specification failed to provide sufficient notice of the facts upon which the specification was based.

IV. Appellant contends that the evidence of record failed to support a finding of negligence as alleged.

V. Appellant urges that the entire proceeding was unfair.

VI. Appellant urges that the remedial sanction of the Administrative Law Judge was arbitrary and capricious.

APPEARANCE: Christopher H. Mansuy of Walker and Corsa, New York, New York

OPINION

I

Appellant argues that dismissing the first specification while finding the second specification proved is inconsistent and requires reversal. I do not agree.

The two specifications as drafted are separate and distinct. The proof, or lack of proof, of one is not dependent upon the other. The first specification addresses the failure to verify the vessel's actual position and the second addresses a failure to supervise the bridge watch. In spite of any commonality in the elements of proofs, there is sufficient distinction between the two specifications to permit findings that are independent. Even if the findings were inconsistent, this would not of itself be reversible error. See Decision of Appeal 2043 (FISH).

II

The testimony of the Second Mate, Bartlett, was taken by deposition in Seattle, Washington. Appellant urges that the admission of the deposition in evidence was error since the Administrative Law Judge who presided at the deposition allowed

deviations from the written interrogatories that were previously agreed to by the Investigating Officer and Counsel. This contention is without merit.

In spite of the leeway given by the Administrative Law Judge in Seattle, the rights of Appellant were adequately protected by the presence of counsel at the deposition. In addition, the Administrative Law Judge struck objectionable portions of the deposition before admitting it. I find that the deposition was taken with adequate procedural safeguards and that its admission after striking objectionable material was not error.

III

The argument of Appellant that the language of the specification found proved failed to provide sufficient notice of the facts upon which the specification was based is not persuasive. As written, the specification satisfies the requirements of 46 CFR 5.05-17(b) and the wording was sufficient to place Appellant on notice of the commissions or omissions with which he was charged. Since it sets forth the facts that are the bases of the charge and is sufficient to have enabled Appellant to identify the offense and prepare a defense, the specification is adequate. See Decision of Appeal 2124 (BARROW). It was also stated in Decision on Appeal 2166 (REGISTER) that:

"A specification need not meet the technical requirements of court pleading, provided it states facts which, if proved, constitute the elements of an offense."

The specification as written is legally sufficient for these administrative proceedings.

IV

Appellant next contends that the evidence of record failed to support a finding of negligence as alleged. I do not agree.

There was much discussion in the record concerning the events that led to the grounding of the vessel. However, it is clear that the Second Mate plotted a course for the vessel using the wrong light. Appellant approved a heading change without verifying the plot and the vessel went aground while sailing that course. Appellant being the Master of the vessel had the primary responsibility for its safety. See Decision on Appeal 2101 (KELLOGG). He had a heavy responsibility to ensure that his subordinates carried out their duties properly and without jeopardizing the vessel's safety; this he did not do. See Decision on Appeal 2113 (HINDS). The evidence was sufficient to support the

finding of negligence.

V

Appellant urges that the proceeding was conducted in an unfair manner, prejudicial to him. In support of this position he mentions the particulars discussed below. For the reasons stated all are without merit.

Appellant first states that the proceeding against his license was totally unnecessary since the Second Mate had been charged and found negligent. A duty to act may rest with more than one individual under certain circumstances. In this case, although the Second Mate was on watch and had the initial responsibility for plotting the course of the vessel, the Master was ultimately responsible for its safety. See (KELLOGG), supra. The Master of a vessel cannot exculpate himself from his responsibilities due to failure of his officers to perform their duties properly. See (HINDS), supra.

He next urges that uncertainty on the part of the Coast Guard as to whether to charge Appellant requires reversal. The fact that the Investigating Officer informed Appellant that he was not to be charged does not help Appellant unless he relied on the information to his detriment. The record does not show that there was an detrimental reliance; therefore, the findings of the Administrative Law Judge will not be disturbed. See Decision of Appeal 2194 (HARTLEY).

VI

Appellant argues that the part of the order suspending all valid licenses issued to him was arbitrary and capricious. Appellant contends there is no basis for jurisdiction over his Merchant Mariners Document. 46 CFR 5.20-170 provides that.

"An order shall be directed against all licenses, certificates, and/or documents, except that in cases of negligence or professional incompetence, the order may be made applicable to specific licenses or documents in qualified ratings."

In this case the charge was negligence, therefore the inclusion of all licenses and/or documents was discretionary with the Administrative Law Judge. In his discretion he chose to include all licenses issued, he did not include documents. Merchant Mariners Documents are not included in the term licenses. See Decision on Appeal 1501 (WHITE). I find that the Administrative Law Judge's order was neither arbitrary nor

capricious.

CONCLUSION

There was substantial evidence of a reliable and probative nature to support the finding of the Administrative Law Judge. The hearing was fair and conducted in accordance with the requirements of applicable regulations.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 11 June 1981, is AFFIRMED.

B. L. STABILE
Vice Admiral, U. S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C., this 9th day of May 1983.